UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/001,580	11/01/2001	Yoon Kean Wong	3704PALMUSORG	2720

22879   7590   04/20/2011
HEWLETT-PACKARD COMPANY
Intellectual Property Administration
3404 E. Harmony Road
Mail Stop 35
FORT COLLINS, CO 80528

EXAMINER
COPPOLA, JACOB C

ART UNIT	PAPER NUMBER
3621	

NOTIFICATION DATE	DELIVERY MODE
04/20/2011	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

JERRY.SHORMA@HP.COM
ipa.mail@hp.com
laura.m.clark@hp.com

	Application No.	Applicant(s)
Office Action Summary	10/001,580	WONG ET AL.
	Examiner	Art Unit	
	JACOB C. COPPOLA	3621	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>15 February 2011</u>.
2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) <u>30-34,36,37,39-42,44-46,48-52,54 and 56-59</u> is/are pending in the application.
   4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) <u>30-34,36,37,39-42,44-46,48-52,54 and 56-59</u> is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
    a) ☐ All   b) ☐ Some *   c) ☐ None of:
      1. ☐ Certified copies of the priority documents have been received.
      2. ☐ Certified copies of the priority documents have been received in Application No. _____.
      3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
   Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Acknowledgements

1.   This Office Action is in reply to Applicants' response filed on 15 February 2011 ("2011 Feb Response").

2.   Claims 30-34, 36, 37, 39-42, 44-46, 48-52, 54, and 56-59 are currently pending and have been examined.

3.   This Office Action is given Paper No. 20110413. This Paper No. is for reference purposes only.

Claim Rejections - 35 USC §103

4.   The following is a quotation of 35 U.S.C. §103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

5.   Claims 30-32, 36, 37, 39, 40, 45, 46, 48-50, 52, 54, and 56-59 are rejected under 35 U.S.C. §103(a) as being unpatentable over Banatre et al. (U.S. 6,901,261 B2) ("Banatre"), in view of Steiner et al. (U.S. 5,528,248 A) ("Steiner"), and in view of Peterson et al. (U.S. 6,324,522 B2) ("Peterson").

Regarding Claims 30, 39, and 48

6.   Banatre discloses:

a handheld computer ("portable sets," e.g., "personal digital assistant" – see at least c. 2,

ll. 13-15 and c. 5, ll. 27-28; also referred to as "portable set Ui") comprising (a) a location circuit

configured to provide location data ("communication **4**" discussed in at least c. 5, ll. 55-59 and

shown in fig. 1 as containing at least a "Pid" and as sent from the "Ui" (i.e., "portable set Ui") to

the Si via the Bai; see also c. 6, ll. 17-19 describing the Pid; also a hardware component

equivalent to the "location circuit" is necessarily present in the "portable set" since the portable

set provides the "communication **4**" (i.e., the claimed "location data")) based at least in part on

the location of the handheld computer (again see at least c. 6, ll. 17-19 describing the Pid as

indicating the position or location of user and Ui) and (b) a wireless transceiver (see

communication interface discussed in at least c. 5, ll. 27-37) configured to provide wireless

communication of the location data and a user identifier (see again "communication **4**" discussed

in at least c. 5, ll. 55-59 and shown in fig. 1 as containing a "Uid" (i.e., user identifier); see also

c. 5, ll. 21-22 describing "Uid"); and

a data processor configured to receive the location data and the personal identifier (see at

least the Bai of fig. 1) and to send a targeted promotion for selling a product to a person

associated with the user identifier based at least in part on the location data (see at least c. 7, ll.

15-30 discussing a user targeted product promotion; see also pricing characteristic of a context-

sensitive service discussed in c. 2, ll. 5-8; see also c. 1, ll. 10-18).

7.   Banatre does not directly disclose:

wherein the location circuit is configured to provide the location data using at least one of

a signal from a global positioning system and radio frequency (RF) triangulation, and (b) a

wireless transceiver; and

a data processor configured to set a price for selling the product, and to adjust the price

lower for selling the product for a person associated with the user identifier.

8.   Steiner teaches a location circuit ("GPS Smart Antenna **20**") configured to provide

location data using a signal from a global positioning system (see at least c. 8, l. 49 – c. 9, l. 4;

and fig. 1).

9.   Therefore, it would have been obvious to one of ordinary skill in the art, at the time the

invention was made, to modify the handheld device of Banatre to have a location circuit as

taught by Steiner. One would have been motivated to do so because the location circuit of

Steiner also provides "rate of change of location of the [circuit]" and "heading of the [circuit]."

Steiner at 8:60-62. This is an advantage over the location device of Banatre. Steiner's device

not only provides the location data, it also provides data about the speed and direction of the

device. Implementing such a device would be a beneficial modification to the system of Banatre

because it would allow vendors to predict a customer's next location.

10.   For example, in Banatre, one use of the location device is to determine whether a

customer is in a particular department of a department store. Banatre at 7:16-29. Depending on

the department the customer is located in, a promotion is sent to the device regarding a product

in the respective department; and, moreover, the promotion cannot be sent until the system

determines which department the user is located in. However, if a user is moving quickly and is

simply passing through a department, Banatre's promotion may not reach the customer until they

have gone onto the next department. This would be ineffective in attracting a sale to that

particular department because the user may not feel like backtracking to review the promoted

product. On the other hand, if Banatre's device was able to determine the speed and direction of

the user (like Steiner's device), then Banatre's device would be able to provide information

allowing the department store owner to predict the next department the user will be entering and

send a promotion based on the next predicted department before the user gets to the department.

This would be more affective because the customer would be alerted to promotions prior to

arriving at the department, and thus more likely to stop and review the promoted product.

11.   Peterson teaches a data processor configured to receive a personal identifier, to set a price

for selling a product, and to adjust the price lower for selling the product for a person associated

with the user identifier (see at least c. 24, ll. 9-20).

12.   Therefore, it would have been obvious to one of ordinary skill in the art, at the time the

invention was made, to modify the system of Banatre, which delivers a context-sensitive

promotion of a product based on a user ID and a position ID of the user, to include the

functionality of Peterson's system that sets prices and adjusts the prices based on specific user's

ID. One would have been motivated to do so because this would allow the vendors of Banatre to

include user specific pricing in their targeted promotions. See Peterson at c. 24, ll. 9-20

("enables [a] vendor to quote different prices to different customers.").

Regarding Claims 31, 32, 36, 37, 40, 45, 46, 49, 50, 52, 54, and 56-59

13.   The combination of Banatre and Peterson meet the limitations of claims 30, 39, and 48,

as shown above, and further disclose the limitations of:

At least claim 31: A system for pricing a product as in claim 30, wherein the data

processor is remote from the handheld computer (Banatre: fig. 1);

At least claim 32: A system for pricing a product as in claim 31, wherein the data

processor is configured to receive the location data from the location circuit wirelessly through a

cellular network (Banatre: c. 5, ll. 55-59);

At least claim 36: A system for pricing a product as in claim 30, wherein the data

processor is configured to dynamically adjust the price for the product based on the location of

the handheld computer (promotion of Banatre is based on location of the Ui; moreover, the

promotion can be a price adjustment as in Peterson; therefore, the combination meets a price

adjustment based on location – see citations above with respect to claim 30);

At least claim 37: A system for pricing a product as in claim 30, wherein the location data

further comprises a distance between the location of the handheld computer and a provider of the

product (Banatre: description of Pi and "perimeter");

At least claim 54: The system of Claim 30, wherein the handheld computer comprises a

cellular telephone (Banatre: c. 2, ll. 12-14); and

At least claim 58: The system of Claim 30, wherein the data processor is further

configured to receive user information and to set the price for the product based on the user

information (see at least Banatre at c. 7, ll. 15-30 and Peterson at c. 24, ll. 9-20).

14.   Claims 33, 41, 44, and 51 are rejected under 35 U.S.C. §103(a) as being unpatentable

over Banatre et al. (U.S. 6,901,261 B2) ("Banatre"), in view of Steiner et al. (U.S. 5,528,248 A)

("Steiner"), in view of Peterson et al. (U.S. 6,324,522 B2) ("Peterson"), and in further view of

Brick et al. (U.S. 6,269,342 B1) ("Brick").

Regarding Claims 33, 41, 44, and 51

15.   The combination of Banatre, Steiner, and Peterson meet the limitations of claims 30, 39,

and 48, as shown above. The combination further discloses adjusting a price of a product based

on a change of the location of the handheld computer (Banatre discloses the PDA enters

perimeter and user receives promotion for the product, combined with Peterson's price

adjustment as an integral part of the promotion).

16.   The combination does not directly disclose wherein the data processor is further

configured to price the product based on a date or a time of day.

17.   Brick teaches a data processor configured to price a product based on a date or a time of

day (c. 11, ll. 38-53 & c. 15, l. 60 – c. 16, l. 6).

18.   Therefore, it would have been obvious to one of ordinary skill in the art, at the time the

invention was made, to modify Banatre and Peterson to price products based on a date or a time

of day, as taught by Brick, in order to vary pricing according to competitors (Brick: c. 15, l. 60 –

c. 16, l. 6).

19.   Claims 34 and 42 are rejected under 35 U.S.C. §103(a) as being unpatentable over

Banatre et al. (U.S. 6,901,261 B2) ("Banatre"), in view of Steiner et al. (U.S. 5,528,248 A)

("Steiner"), in view of Peterson et al. (U.S. 6,324,522 B2) ("Peterson"), and in further view of

Dueck et al. (U.S. 6,012,834 A) ("Dueck").

Regarding Claims 34 and 42

20.   The combination of Banatre, Steiner, and Peterson meet the limitations of claims 30, 39,

and 48, as shown above. The combination does not directly disclose wherein the data processor

is further configured to price the product based on an environmental condition, including a

weather condition.

21.   Dueck teaches a data processor configured to price products based on an environmental

condition, including a weather condition (c. 2, ll. 6-13).

22.   Therefore, it would have been obvious to one of ordinary skill in the art, at the time the

invention was made, to modify Banatre and Peterson to price products based on weather, as

taught by Dueck, in order to price products for current demand (Dueck: c. 1, ll. 52-58).

23.   Claims 30-33, 36, 37, 39-41, 44-46, 48-52, 54, and 56-59 are alternatively rejected under

35 U.S.C. §103(a) as being unpatentable over Vendetti et al. (EP 0 568 824 A2) ("Vendetti"), in

view of Steiner et al. (U.S. 5,528,248 A) ("Steiner").

Regarding Claims 30-33, 36, 37, 39-41, 44-46, 48-52, 54, and 56-59

24.   Vendetti discloses:

a handheld computer ("mobile unit 62") comprising (a) a location circuit configured to provide location data based at least in part on the location of the handheld computer, and (b) a wireless transceiver configured to provide wireless communication of the location data and a user identifier; and a data processor configured to receive the location data and the personal identifier, to set a price for selling a product, and to adjust the price lower for selling the product to a person associated with the user identifier based at least in part on the location data (see at least abstract; c. 5, ll. 20-44; c. 6, ll. 20-40; c. 7, ll. 1-30; c. 8, ll. 31-50).

25.   Vendetti does not directly disclose wherein the location circuit is configured to provide the location data using at least one of a signal from a global positioning system and radio frequency (RF) triangulation.

26.   Steiner teaches a location circuit ("GPS Smart Antenna **20**") configured to provide location data using a signal from a global positioning system (see at least c. 8, l. 49 – c. 9, l. 4; and fig. 1).

27.   Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the handheld device of Vendetti to have a location circuit as taught by Steiner. One would have been motivated to do so because the location circuit of Steiner also provides "rate of change of location of the [circuit]" and "heading of the [circuit]." Steiner at 8:60-62. This is an advantage over the location device of Vendetti. Steiner's device not only provides the location data, it also provides data about the speed and direction of the device. Implementing such a device would be a beneficial modification to the system of

Vendetti because it would allow a customer to be alerted to a rising price if they were headed for

a more expensive coverage zone.

28.   Claims 34 and 42 are <u>alternatively</u> rejected under 35 U.S.C. §103(a) as being

unpatentable over Vendetti et al. (EP 0 568 824 A2) ("Vendetti"), in view of Steiner et al. (U.S.

5,528,248 A) ("Steiner"), and in further view of Dueck et al. (U.S. 6,012,834 A) ("Dueck").

<u>Regarding Claims 34 and 42</u>

29.   The combination of Vendetti and Steiner meet the limitations of claims 30, 39, and 48, as

shown above. The combination does not directly disclose wherein the data processor is further

configured to price the product based on an environmental condition, including a weather

condition.

30.   Dueck teaches a data processor configured to price products based on an environmental

condition, including a weather condition (c. 2, ll. 6-13).

31.   Therefore, it would have been obvious to one of ordinary skill in the art, at the time the

invention was made, to modify Vendetti to price products based on weather, as taught by Dueck,

in order to price products based on current demand (Dueck: c. 1, ll. 52-58).

Claim Interpretation

32.   Unless expressly noted otherwise by the Examiner, the Examiner maintains his position

on claim interpretation as noted in Paragraph Nos. 51-53, Paper No. 20101109.

Response to Arguments

<u>Prior Art</u>

33.   Applicants argue "First, Banatre fails to teach or suggest using GPS or RF triangulation to determine position." 2011 Feb Response at p. 10, ll. 19-20.

34.   This argument is not persuasive because of the new grounds of rejection using Steiner. Moreover, the Examiner disagrees that Banatre fails to teach using GPS to determine position. In fact, Banatre expressly discloses "[w]e already know about solutions which envisage marrying telephony and the GPS ... radio navigation system for location and tariff adjustment." Banatre at 1:19-24.

35.   Additionally, Applicants argue "Second, Banatre teaches away from the use of GPS or RF triangulation by criticizing those techniques. Banatre criticizes GPS as being 'difficult to implement....'" 2011 Feb Response at p. 10, ll. 25-26.

36.   The Examiner respectfully disagrees. For at least GPS, Banatre is not believed to be "teaching away," he is merely disclosing a non-preferred embodiment. Banatre considers GPS a non-preferred embodiment because it known in the art to use such a technique, it is just "difficult to implement." Therefore, Banatre expressly recognizes that his invention could use such a technique – it would just be difficult to implement. Applicants are respectfully reminded that a disclosed preferred embodiment does not constitute a teaching away from a non-preferred embodiment. MPEP §2122 II.

37.   Additionally, Applicants argue "Banatre does not teach providing wireless

communication of location data determined from GPS or RF triangulation aspects." 2011 Feb

Response at p. 11, ll. 2-3. This argument is moot in view of the new grounds of rejection.

38.   Additionally, Applicants argue:

>   Fourth, even assuming the combination of Banatre and Peterson was proper, the
>   combination would still fail to teach or suggest "a data processor configured.., to
>   adjust the price lower for selling the product.., based at least in part on the
>   location data." In Banatre, a vendor simply quotes different prices to different
>   customers, with discounted price being displayed to a user based on the user's
>   user ID given at log-on. This does not teach a data processor configured to adjust
>   a price lower based on location data.

2011 Feb Response at p. 11, ll. 5-10.

39.   The Examiner respectfully disagrees. In Banatre, the vendor does not simply "quote[]

different prices to different customers, with [a] discounted price being displayed to a user based

on the user's user ID given at log-on." This argument is a conclusion. Additionally, Applicants

have not pointed to a factual statement or portion of Banatre to support this conclusion.

Moreover, even when assuming Applicants' conclusion is true, Banatre's discounted price is also

based on the location data provided by the handheld device. Banatre at 7:16-29

40.   Additionally, Applicants argue:

>   Fifth, the combination of Banatre and Peterson is improper. Peterson discloses a
>   system for quoting prices for maintenance repair and operating (MRO) parts and
>   supplies. Peterson is silent regarding any sort of location-based pricing, much less
>   location-based pricing involving the location of a handheld computing device.
>   Peterson fails to recognize the problem addressed by the present claims and is not
>   in the analogous art of Banatre.

2011 Feb Response at p. 11, ll. 12-16.

41.　　The Examiner respectfully disagrees. Both Banatre and Peterson are in the computer

related arts. Moreover, both are directed to selling products to customers at varying prices.

Applicants are arguing the references individually.

Conclusion

42.　　Applicants' amendment filed in the 2011 Feb Response necessitated the new grounds of

rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**.

See MPEP § 706.07(a). Applicants are reminded of the extension of time policy as set forth in

37 C.F.R. § 1.136(a).

43.　　Because this application is now final, Applicant are reminded of the USPTO's after final

practice as discussed in MPEP §714.12 and §714.13 and that entry of amendments after final is

not a matter of right. "The refusal of an examiner to enter an amendment after final rejection of

claims is a matter of discretion." In re Berger, 279 F.3d 975, 984, 61 USPQ2d 1523, 1529 (Fed.

Cir. 2002) (citations omitted). Furthermore, suggestions or examples of claim language provided

by the Examiner are just that—suggestions or examples—and do not constitute a formal

requirement mandated by the Examiner. Unless stated otherwise by an express indication that a

claim is "allowed," exemplary claim language provided by the Examiner to overcome a

particular rejection or to change claim interpretation has not been addressed with respect to other

aspects of patentability (e.g. §101 patentable subject matter, §112, first paragraph written

description and enablement, §112, second paragraph indefiniteness, and §102 and §103, prior

art). Therefore, any claim amendment submitted under 37 C.F.R. §1.116 that incorporates an

Examiner suggestion or example or simply changes claim interpretation will nevertheless require further consideration and/or search and a patentability determination as noted above.

44.   A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 C.F.R. § 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

45.   The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure (see attached form PTO-892). All references listed on form PTO-892 are cited in their entirety.

46.   Any inquiry of a general nature or relating to the status of this application or concerning this communication or earlier communications from the Examiner should be directed to Jacob C. Coppola whose telephone number is (571) 270-3922. The Examiner can normally be reached on Monday-Friday, 9:00 a.m. - 5:00 p.m. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Andrew Fischer can be reached at (571) 272-6779.

47.   Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private

PAIR system, please contact the Electronic Business Center (EBC) at (866) 217-9197 (toll-free).

/JACOB C. COPPOLA/
Patent Examiner, Art Unit 3621
13 April 2011

/ANDREW J. FISCHER/
Supervisory Patent Examiner, Art Unit 3621